

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

An ordinance establishing procedures for )  
determinations relating to the vesting of )  
development rights under ORS 197.352, )  
and declaring an emergency. )

ORDINANCE No. 1255

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS  
FOLLOWS:

SECTION 1. TITLE

This ordinance shall be known as the Measure 49 Vested Rights Ordinance.

SECTION 2. PURPOSE

The purpose of this ordinance is to establish a procedure for determining whether a property owner who was granted a waiver from land use regulations pursuant to ORS 197.352 before it was amended by the adoption of Ballot Measure 49, Chapter 424, Oregon Laws 2007, enacted by the voters on November 6, 2007, has a common law vested right to complete and continue the use described in the waiver.

SECTION 3. DEFINITIONS

(1) As used in this ordinance, words and phrases shall have the same meaning as provided in Ballot Measure 49.

(2) As used in this ordinance: "Planning Director" means the Marion County Planning Director or designee.

SECTION 4. APPLICATION

(1) Any person who wishes to complete or continue any use of property allowed pursuant to a waiver shall file an application for a vested rights

determination as required by Measure 49. Until the board's determination of vested rights has been made, no permits shall be issued, and, if the county has issued permits, an order stopping work under those permits will be issued.

(2) An application for a vested rights determination must be submitted to the planning division in the form prescribed by the Planning Director and signed by the owner. The complete application shall include the following information:

(a) Name, address, telephone number and signature of the owner filing the application.

(b) A copy of the conveyance document that shows the applicant's interest in the real property and includes a legal description and physical address of the property.

(c) Copies of both Marion County's and the State of Oregon's orders approving a waiver for the property.

(d) A copy of any land use approvals and construction permits issued that allow development of the property.

(e) Identification of expenditures made to develop the property and the dates of those expenditures.

(f) A written statement describing:

(A) How the applicant's use of the property is consistent with the waiver; and

(B) How the applicant has a common law vested right to complete or continue the use described in the waiver.

- (g) An application fee to be established by separate order of the board of commissioners.

SECTION 5. PLANNING DIVISION REPORT

- (1) The planning director will prepare a staff report that describes the vested rights application, sets forth all pertinent facts, and makes a recommendation on how the application should be resolved.
- (2) The planning director's report and recommendation shall be forwarded to the Marion County Hearings Officer for a public hearing.

SECTION 6. PUBLIC HEARINGS

- (1) The hearings officer shall conduct a public hearing on the application for a determination of vested rights.
- (2) After the public hearing, the hearings officer shall make a recommendation to the board of commissioners for final action regarding:
  - (a) Whether the applicant's use of the property complies with the waiver granted by the state and the county; and
  - (b) Whether applicant had a common law vested right on December 6, 2007, to complete and continue the use described in the waiver.
- (3) (a) The hearings officer's recommendation shall be based on the hearings officer's analysis of the staff report submitted by the planning director; the evidence and testimony contained in the record and the applicable laws.
- (b) The hearings officer's recommendation shall be consistent with the Oregon Supreme Court's and Court of Appeals' decisions addressing vested rights issues and shall be based on a multifactor test that will

include consideration of the factors that the courts have identified as relevant to aid in the equitable balancing test required for a determination of vested rights:

- (A) The ratio of expenditures incurred to the total cost of the project;
  - (B) The good faith of the developer;
  - (C) Whether the developer had notice of any proposed zoning or amendatory zoning before starting the improvements;
  - (D) The type of expenditures, i.e., whether the expenditures have any relation to the completed project or could apply to other various uses of the land;
  - (E) The nature, location, and ultimate cost of the project;
  - (F) Whether the actions rise beyond mere preparation; and
  - (G) Other relevant factors.
- (4) A copy of the hearings officer's recommendation shall be mailed to the planning director, the applicant, the applicant's representative, any person who testified at the hearing and any person who submitted a written request for a copy of the recommendation. The recommendation shall be mailed not less than seven days prior to the date the board will consider the recommendation.
- (5) The board of commissioners may conduct a public hearing before taking final action on the hearings officer's recommendation, if requested by any person who participated at the hearing before the hearings officer, or at the board's discretion.

## SECTION 7. CONSENT AGENDA

(1) Notwithstanding Sections 5 and 6 of this ordinance, if the planning director determines that an application establishes both compliance with the waiver and a vested right without the need for additional evidence or analysis, the application will be placed on the board of commissioners' public meeting consent agenda for final action. If an applicant, any board member or any member of the public requests a hearing on the application, it will be set for a public hearing before the hearings officer pursuant to Section 6 of this ordinance.

(2) Notice that an application will be considered on the consent agenda will be mailed to the applicant and to the owners of real property within 250 feet of the subject property if located inside an urban growth boundary (UGB); 500 feet of the subject property if located on non-resource land outside of a UGB; and 750 feet of the subject property if located on resource land.

(3) Notice shall be mailed not less than seven days prior to the date the board will consider the consent agenda.

## SECTION 8. NOTICE OF PUBLIC HEARINGS

(1) Notice of a public hearing before the hearings officer and the board of commissioners shall be mailed to the applicant and to the owners of record of real property within 250 feet of the subject property if located in a UGB, 500 feet of the subject property if located on non-resource land outside of a UGB and 750 feet of the subject property if located on resource land. Notice shall be mailed not less than seven days prior to the scheduled hearing.

(2) The notice of the public hearing before the hearings officer shall include a summary of the planning director's report, if it was not included in a consent agenda notice.

(3) The failure of any person to receive notice of a public hearing shall not affect or invalidate any proceeding under this ordinance.

#### SECTION 9. BOARD FINAL DECISION

(1) The board of commissioners shall consider the hearings officer's recommendation and all documents, evidence and testimony in the record. The board shall enter an order determining whether the applicant's use of the property complies with the waiver and whether applicant had a common law vested right on December 6, 2007, to complete and continue the use described in the waiver.

(2) If the board determines that the applicant has a common law vested right to complete and continue the use, the county will issue land use and development permits in accordance with state and county laws and regulations.

(3) The board's decision will be subject to review by writ of review, ORS 34.010 to 34.102.

#### SECTION 10. SEVERABILITY

Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

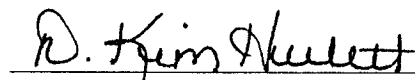
SECTION 11. DECLARATION OF EMERGENCY

This ordinance being necessary for the immediate preservation of the health, safety and welfare of the community, an emergency is declared to exist and this ordinance will take effect on December 6, 2007.

Adopted at Salem, Oregon, this 5<sup>th</sup> day of December 2007.

MARION COUNTY BOARD OF COMMISSIONERS

  
Chair

  
Recording Secretary

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